

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed May 14, 2008. Claims 2, 3, 9-12, and 14-20 were previously canceled. Claims 1, 5-8, 13, 21, and 24 are amended, and new claims 27-33 are added. Claims 1, 4-8, 13, and 21-33 are now pending in view of the above amendments.¹

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. ALLOWED SUBJECT MATTER

The Examiner has indicated that claims 7 and 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant respectfully thanks the examiner for this indication of allowable subject matter. However, because Applicant believes that the current amendments place claim 1 in condition for allowance, Applicant has not rewritten claims 7 and 8 in independent form at this time.

¹ Support for the claim amendments and new claims can be found throughout the specification and drawings as originally filed.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §102(b)

The Office Action rejected claims 1, 4-6, 21, 22, 24, and 25 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,960,410 (*Pinchuk*).² Applicant respectfully traverses this rejection.

The Office Action asserted that the *Pinchuk* "discloses a balloon catheter comprising . . . coupled proximal (60) and distal (64) portions . . . where a transitional portion (62) has kink protection." (Office Action, page 2). However, claim 1 has been amended to recite, in part, "a transitional portion between the proximal and distal portions is provided with kink protection at least partially overlapping the proximal and distal portions." (Emphasis added.) Similarly, claim 24 has been amended to recite, in part, "a kink protection being disposed about the transition and at least partially overlapping the proximal and distal portions." (Emphasis added.) Applicant respectfully asserts that *Pinchuk* does not teach these elements.

Rather in direct contrast, *Pinchuk* teaches "a first rather stiff plastic tube 60 that extends . . . to the catheter's distal end . . . [and a] second more flexible tube or sheath 64 covers and is bonded to the reduced diameter portion of the tube 60." (*See*, col. 3, ll. 17-20, 45-48.) Applicant respectfully submits that the sheath 64 is not the same as "kink protection at least partially overlapping the proximal and distal portions," as recited, in part, by claim 1; nor is it the same as "kink protection . . . at least partially overlapping the proximal and distal portions," as recited, in part by claim 24. In addition, the sheath 64, which the Examiner cites as teaching the distal portion, cannot also be cited as teaching the kink protection, and it does not and cannot overlap itself as required by claims 1 and 24 as presently amended.

Accordingly, *Pinchuk* does not disclose, teach, or suggest each and every element of claims 1 and 24 as currently amended. As such, *Pinchuk* does not anticipate claims 1 and 24. For this reason, Applicant respectfully requests that the rejection of claims 1 and 24 under § 102 be withdrawn. Furthermore, dependent claims 4-6 and 25 are allowable for at least the same reasons claims 1 and 24 are allowable.

² Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

In addition, the Office action asserted that *Pinchuk* "discloses a balloon catheter comprising . . . coupled proximal (60) and distal (64) portions . . . where a transitional portion . . . includes a sleeve." (Office Action, page 2) However, claim 21 has been amended to recite, in part, "the proximal and distal portions being coupled together by a sleeve that at least partially overlaps the proximal and distal portions." (Emphasis added.) Applicant respectfully submits that *Pinchuk* does not teach this element.

Rather, in direct contrast, *Pinchuk* teaches a sheath that "covers and is bonded to the reduced diameter portion of the tube." (See, col. 3, ll. 45-48.) Applicant respectfully submits that the sheath as taught by *Pinchuk* is not the same as "a sleeve that at least partially overlaps the proximal and distal portions," as recited, in part, by claim 1. In addition, because the Examiner cites the sheath as teaching the distal portion, it cannot also be used to teach the sleeve, and it cannot and does not overlap itself as required by claim 21.

Accordingly, *Pinchuk* does not disclose, teach, or suggest, each and every element of claim 21 as currently amended. As such, *Pinchuk* does not anticipate claim 21. For this reason, Applicant respectfully requests that the rejection of claim 21 under § 102 be withdrawn. Furthermore, dependent claim 22 is allowable for at least the same reasons claim 21 is allowable.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 13, 23, and 26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,960,410 (*Pinchuk*) in view of U.S. Patent No. 5,951,494 (*Wang*). As discussed in more detail above, *Pinchuk* fails to disclose, teach, or suggest each and every element of claims 1, 21, and 24. Furthermore, *Wang* does not remedy the deficiencies of *Pinchuk* with respect to claim 1. Accordingly, dependent claims 13, 23, and 26 are allowable for at least the same reasons stated above.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending

application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12th day of September, 2008.

Respectfully submitted,

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